

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act	)	
of 1991	)	
	)	

**REPLY COMMENTS OF  
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association (“CompTel”) respectfully submits these Reply Comments in the above-captioned proceeding in order to stress one critically important point: that the Federal Communications Commission (“FCC” or “Commission”) give careful consideration to the potential competitive effects of any rules it is considering with regard to adopting a “Do-Not-Call” database. Although the Commission is by no means under any obligation to establish a national “Do-Not-Call” (“DNC”) database for common carriers, many commenters, such as the Federal Trade Commission (“FTC”), seem to regard this as a foregone conclusion.

While the concept of limiting unwanted telephone solicitations may seem to provide unambiguous benefits to consumers, these benefits are not without substantial costs. Indeed, were the Commission to uncritically accept the suggestions of the FTC on the “established business relationship” exception to the DNC list it urges the Commission to mandate, the Commission risks raising the costs of competitive carriers vis-à-vis the

incumbent monopolies and thereby limiting consumer choices and consumer welfare in all consumer telecommunications markets.<sup>1</sup>

Because the FTC has no jurisdiction over common carriers, it has never had to confront this issue. Nonetheless, if the FCC were simply to adopt the FTC's definition of established business relationship, it would hand the incumbent LECs a huge marketing advantage. Under the FTC's rules, a company has an established business relationship with a consumer who has purchased goods or services from that company within 18 months of the telephone call.<sup>2</sup> As a result of the incumbent LECs' long-standing (and previously government-sanctioned) monopolies, they currently enjoy established business relationships with over 90% of all potential customers, and thus could solicit those customers for innovative bundled service offerings—such as those originally developed by MCI, Z-Tel, and other competitive carriers. Competitive LECs' marketing efforts, on the other hand, would be severely constrained. Restricting the ability of new entrants to efficiently access prospective consumers would not only further entrench the incumbent LECs' monopoly in local services, but could also lead to the extension of the monopoly into all distance services.

In its May 5 comments, WorldCom explained that the FCC should seek to fulfill Congressional Policy as expressed in the local competition provisions of the Communications Act, as well as the Do Not Call Act.<sup>3</sup> Thus, the Commission has both the flexibility and the obligation to adopt rules that are different from those adopted by the FTC in certain respects.

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<sup>1</sup> See, Comments of the Federal Trade Commission, submitted May 12, 2003, pp. 26-28.

<sup>2</sup> *Id.*

<sup>3</sup> Comments of WorldCom, submitted May 5, 2003, pp.2-4.

CompTel urges the Commission to give considerable weight to the fact that the local telephone business is unlike any other business or industry in the country. Incumbent local exchange carriers were the sole providers of local telephone service for 100 years, and their monopolies were protected by the government. The Telecommunications Act of 1996 marked a sea change in the government's approach to local telecom services – Congress directed the FCC and the state commissions to open local telecommunications service to competition. Development of local competition is in a very early stage right now, as new entrants are beginning to overcome the relentless opposition of the incumbent local exchange carriers and to attract residential customers, but incumbents remain dominant, providing local service to well over 90% of residential customers. It is critical to the development of competition for local telephone service that new entrants be able to educate customers and make them aware that there are alternatives to the incumbents offerings.

One helpful suggestion proposed by WorldCom is that the FCC should use the full extent of its statutory discretion to determine that all consumers are deemed to have an established business relationship with all providers of local service (incumbents as well as new entrants).<sup>4</sup> Under WorldCom's proposal, this presumption would remain until the Commission reaches a determination that competition is sufficiently developed.

The ability of new entrants to reach consumers is essential to the development of local competition. Accordingly, competitive carriers must have the same opportunities as incumbent LECs to compete for customers using the same, efficient marketing techniques that are available to the incumbent monopolies. Thus, CompTel urges the

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<sup>4</sup> WorldCom Comments, pp. 5-7.

FCC to craft any rules it adopts in this proceeding in such a way as to not impose additional obstacles to local competition just as it is beginning to take hold.

Respectfully submitted,

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